

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

SHERIFF MEWS, L.L.C. and
JOHN CASEY
Respondents

Case Nos.: I-00-10009
I-00-10120

FINAL ORDER

I. Introduction

On January 24, 2000, the Government served a Notice of Infraction (No. 00-10009) charging Respondents Sheriff Mews, L.L.C. ("Sheriff Mews") and John Casey with violating 21 DCMR 502.1, which requires persons who undertake land disturbing activities to obtain a permit. The Notice of Infraction asserted that the infraction had taken place in the 1000 block of 50th Place, N.E. at Sheriff Road. It stated that December 15, 1999 was the date that the infraction had occurred or was determined, and sought a fine of \$500.00.

Respondents did not answer the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, on February 29, 2000, this administrative court issued an order finding Respondents in default, assessing a penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A)

and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-2712(f).

On February 29, 2000, the Government served the second Notice of Infraction (No. 00-10120). Respondents also did not answer that Notice within twenty days of service. Accordingly, on June 9, 2000, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and assessing total penalties of \$1,000.00 pursuant to D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set July 5, 2000 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at the hearing to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notice of Infraction.

Prior to the July 5 hearing, the Government filed a copy of a photograph in support of its allegations, but waived personal appearance. The July 5 hearing took place as scheduled, but neither the Government nor Respondents appeared. On July 28, 2000, this administrative court issued an Order Requiring an Evidentiary Hearing, ruling that additional evidence was necessary in order to prove that Respondents had violated §502.1 and requiring the Government to appear for a hearing on August 16, 2000. That order afforded Respondents yet another opportunity to appear to contest liability, fines, penalties or fees.

On August 16, 2000, this administrative court held an evidentiary hearing. The inspector who issued the Notice of Infraction testified about his personal observations at the site and his efforts to determine both the ownership of the property and the role of Respondent John Casey

with respect to the activities at issue. Respondents did not appear at the hearing. The inspector offered five exhibits (Petitioner's Exhibits 200-204), all of which were admitted into evidence.

This matter was heard concurrently with Cases I-00-10124 and I-00-10179, which involve the same Respondents and the same property. I have taken official notice of the record in that matter. In addition, the inspector relied upon the exhibits that the Government had pre-filed in Cases I-00-10186 and I-00-10233, which involve the same property but were not scheduled for hearing until September 6, 2000. I have relied on those exhibits in deciding this case.

II. Findings of Fact

Based upon the inspector's testimony, which I find to be credible, the exhibits in evidence and the entire record in this case, I make the following findings:

1. The property at issue is located in the 1000 block of 50th Place, N.E., at the corner of Sheriff Road. Respondents deposited a large pile of dirt there on or before December 15, 2000.
2. No permit authorized land disturbing activities at the property at the time when the dirt was deposited there.
3. Sheriff Mews owns the property at issue.
4. Respondent John Casey is a contractor engaged in developing the property at issue on behalf of Sheriff Mews, and has represented himself as an agent for Sheriff Mews to government officials.

5. The Notices of Infraction in this matter were served on Sheriff Mews and on Mr. Casey on January 24, 2000 and February 29, 2000, as evidenced by the certificate of service signed by the Government's representative.
6. This administrative court's order dated February 29, 2000 was sent by certified mail to Sheriff Mews and John Casey at 2458 Sandburg Street, Dunn Loring VA 22027-1230. It was returned unclaimed on April 6, 2000.
7. This administrative court's order of June 9, 2000 was sent by first class U.S. mail and by certified mail to Sheriff Mews and John Casey at the Dunn Loring address given above and to 1345 14th Street N.W., Washington, D.C. 20005-3610. The copies sent by first class mail to both addresses have not been returned to the Clerk by the postal service. The certified mail copy sent to the 14th Street address was received there on June 13, 2000, as evidenced by the return receipt that is part of the record. The certified mail copy sent to the Dunn Loring address was returned unclaimed on July 19, 2000.
8. This administrative court's July 28, 2000 order was sent to Sheriff Mews and Mr. Casey by certified mail to the 14th Street address and by first class mail to the Dunn Loring address. It was received at the 14th Street address on July 31, 2000, as evidenced by the return receipt that is part of the record. It was received at the Dunn Loring address on July 31, as evidenced by the postal service's delivery confirmation that is contained in the record.
9. Based on the District of Columbia tax bill for the property at issue (Petitioner's Exhibit 200 in Case I-00-10186 and 10233), I find that Sheriff Mews' business address is 1345 14th Street N.W., Washington, D.C. 20005.

10. Based upon Fairfax County, Virginia property records, of which I take official notice, I find that the property located at 2458 Sandburg Street, Dunn Loring, VA is owned by Mr. Casey and is occupied by him.
11. No explanation has been offered for Respondents' failure to answer the Notices of Infraction.

III. Conclusions of Law

1. Respondents had adequate notice of the charges as mandated both by the Due Process Clause and by applicable statutes. D.C. Code §§ 1-1509(a); 6-2712(b). The June 9 order, which included copies of the Notices of Infraction, was received at Respondents' business address. Moreover, the copy of that order sent by first class mail to Mr. Casey's home address in Dunn Loring has not been returned and there is a presumption that it was received there. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).
2. Respondents also had adequate notice of the hearing dates in this matter. As noted above, there is written confirmation that the June 9 order, which set the July 5 hearing date, was delivered to the 14th Street address, and there is a legal presumption that it was received at the Dunn Loring address. There is also

written confirmation that the July 28 order, which set the additional hearing on August 16, was delivered to both the 14th Street and the Dunn Loring addresses.

3. Based on the unrefuted evidence, Mr. Casey is an agent for Sheriff Mews with respect to the development of the property at issue in this case. Notice to Mr. Casey, therefore, is sufficient notice to Sheriff Mews.
4. Section 502.1 of 21 DCMR requires any person who engages in land disturbing activities within the District of Columbia to obtain a building permit, which may not be issued until the applicant has submitted an approved erosion and sedimentation plan. The regulations define “land disturbing activity” as “any earth movement or land change which may result in soil erosion from water or wind and the movement of sediments . . . including, but not limited to, stripping, grading excavating, transporting and filling of land, construction or demolition of buildings or structures.” 21 DCMR 599.1. The regulations contain a separate definition of “landfilling”, i.e., “any act by which soil is deposited, placed or pushed, where it had not previously been located.” Id. Respondents’ deposit of a large pile of soil onto the property at issue meets the definition of “landfilling”. It therefore constitutes “filling of land”, which is one of the activities included in the definition of “land disturbing activity”. Respondents’ actions, therefore, satisfy the definition of “land disturbing activity”. Because a building permit did not authorize those actions, the placement of the soil on the property violated 21 DCMR 502.1.
5. For violating §502.1, Respondents must pay a civil fine of \$500.00. 16 DCMR 3234.1

6. Respondents failed to answer both the first and the second Notice of Infraction without demonstrating sufficient cause for those failures, and therefore are liable for statutory penalties of \$1,000.00 in addition to the civil fine prescribed for the violation. D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B).
7. Pursuant to D.C. Code §6-2704(b) and 16 DCMR 3114.1(d), Respondents are also liable for the costs of the hearing in this matter in the amount of \$40.00.
8. This order addresses only the violation alleged in Notices of Infraction I-00-10009 and I-00-10120. A separate order issued today imposes fines, penalties and costs for the violations alleged in Notices of Infraction I-00-10124 and I-00-10179 and additional penalties in Case No. I-00-10186 and I-00-10233. The amounts imposed in this order are in addition to the ones imposed in those matters.

IV. Order

Based upon the findings of fact, the conclusions of law and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that Respondents John Casey and Sheriff Mews, LLC are jointly and severally liable in this matter and shall cause to be remitted a single payment totaling **ONE THOUSAND FIVE HUNDRED FORTY DOLLARS (\$1,540.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within

the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **9-8-00**

John P. Dean
Administrative Judge